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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/898,900	07/03/2001	Kevin Taylor	H0075/7076/REH	3612

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EXAMINER

SORKIN, DAVID L

ART UNIT	PAPER NUMBER
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1723

DATE MAILED: 11/25/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/898,900

Applicant(s)

TAYLOR ET AL.

Examiner

David L. Sorkin

Art Unit

1723

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) 14-16 and 27-34 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-13 is/are allowed.
- 6) ☒ Claim(s) 17-23 and 35 is/are rejected.
- 7) ☒ Claim(s) 24-26 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 July 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☒ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other:

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 29 October 2003 has been entered.

### ***Information Disclosure Statement***

2. The Request for Continued Examination refers to an IDS filed "16 October 2003"; however, the examiner has no knowledge of any such IDS being received. Applicant's cooperation in clarifying the record is requested.

### ***Drawings***

3. Applicant's response to the previous office action is incomplete in that the required corrected drawings (corresponding to the approved proposed drawing corrections) were not filed. Further failure to comply will result in abandonment of the instant application. The originally filed drawings, filed 03 July 2001 continue to be objected to by the examiner for the reasons set forth in the Office Action mailed 16 January 2003.

### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the

art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claim 35 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 35 recites the amended limitation "means for transferring said blend from said receptacle to a transfer pipe by way of a rotary valve". While it is unclear what the scope of this limitation is, as discussed below, as best understood this limitation is not supported by the original specification. No "transfer means" in addition to the rotary valve and transfer pipe is disclosed.

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claim 35 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 35 recites the limitation "means for transferring said blend from said receptacle to a transfer pipe by way of a rotary valve". It is unclear what the scope of this limitation is. It is unclear if the "rotary valve" is required by the limitation or if the rotary valve is only mentioned with regard to the function of a means-plus-function recitation. It is unclear what the corresponding structure for the function "transferring said blend from said receptacle to a transfer pipe by way of a rotary valve" is.

***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 17-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Anderson (US 1,933,543). Regarding claim 17, Anderson ('543) discloses an apparatus comprising a receptacle (1) having an input; a mixer (see page 2, lines 78-84); a transfer pipe (25); and a pneumatic pressure source connected to said transfer pipe downstream of an output of said receptacle (see Fig. 1; page 2, lines 44-66). Regarding claim 18, said transfer pipe includes a vertical portion (see Fig. 1). Regarding claim 19, a valve (30) regulates pressure developed by said pneumatic source. Regarding claim 20, means (35) for diverting pressure are disclosed. While the apparatus of Anderson ('543) would be capable of performing the operation recited in claim 21, applicant is advised that "Expressions relating the apparatus to contents thereof during an intended operation are of no significance in determining the patentability of the apparatus claims" *Ex parte Thilbault*, 164 USPQ 666, 667 (Bd. App. 1969). Also, "the manner or method in which such machine is to be utilized is not germane to the issue of patentability of the machine itself" *In re Casey* 152 USPQ 235 (CCPA 1967).

10. Claims 17-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Kovach (US 3,237,865). Regarding claim 17, Kovach ('865) discloses an apparatus comprising a receptacle (see col. 3, lines 11-12) having an input; a mixer (26 and in the

alternative 46); a transfer pipe (42,14); and a pneumatic pressure source (12) connected to said transfer pipe downstream of an output of said receptacle (see Fig. 1). Regarding claim 18, said transfer pipe includes a vertical portion (see Fig. 1). Regarding claim 19, a valve (38 and in the alternative 40) regulates pressure developed by said pneumatic source. Regarding claim 20, means (39) for diverting pressure are disclosed. While the apparatus of Kovach ('865) would be capable of performing the operation recited in claim 21, applicant is advised that "Expressions relating the apparatus to contents thereof during an intended operation are of no significance in determining the patentability of the apparatus claims" *Ex parte Thilbault*, 164 USPQ 666, 667 (Bd. App. 1969). Also, "the manner or method in which such machine is to be utilized is not germane to the issue of patentability of the machine itself" *In re Casey* 152 USPQ 235 (CCPA 1967).

11. Claims 17-19 and 21-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Erndt (US 3,719,214). Regarding claim 17, Erndt ('214) discloses an apparatus comprising a receptacle (11) having an input; a mixer (66); a transfer pipe (70); and a pneumatic pressure source (75,76,77,78,66) connected to said transfer pipe downstream of an output of said receptacle (see Fig. 1). Regarding claim 18, said transfer pipe includes a vertical portion (see Fig. 1). Regarding claim 19, a valve (71 and in the alternative 80) regulates pressure developed by said pneumatic source. While the apparatus of Erndt ('214) would be capable of performing the operation recited in claims 21 and 23, applicant is advised that "Expressions relating the apparatus to contents thereof during an intended operation are of no significance in

determining the patentability of the apparatus claims" *Ex parte Thilbault*, 164 USPQ 666, 667 (Bd. App. 1969). Also, "the manner or method in which such machine is to be utilized is not germane to the issue of patentability of the machine itself" *In re Casey* 152 USPQ 235 (CCPA 1967). Regarding claim 22, weighing means (10) connected to said receptacle and transfer means (the connection between 11 and 70) are disclosed.

12. Claim 35, while indefinite in scope, is rejected under 35 U.S.C. 102(b) as being anticipated by Hood (US 5,908,240), as best understood. Hood ('240) discloses an apparatus comprising a means for feeding (28,29,30,31); weighing means (37), mixing means (13); means for transferring (16,17,40 and 41 or a subset thereof); and means for transporting (14,15,80).

#### ***Allowable Subject Matter***

13. Claims 1-13 are allowed.

14. Claims 24-26 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Response to Arguments***

15. Except for those regarding claim 35, applicant's arguments are moot in view of the new grounds of rejection and indication of allowable subject matter.

16. Regarding claim 35, the "transfer pipe" and "rotary valve" are recited with respect to the function of a particular "means". It is unclear what, if any, corresponding structure is disclosed in the specification for accomplishing this function. Neither the "transfer pipe" nor the "rotary valve" are clearly positively recited as part of the claimed

structure. Applicant's arguments regarding Hood ('240) are directed toward these elements which apparently are not required by claim 35.

***Conclusion***

17. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David L. Sorkin whose telephone number is 703-308-1121. The examiner can normally be reached on 9:00 -5:30 Mon.-Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda L. Walker can be reached on 703-308-0457. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

A handwritten signature in cursive script, appearing to read "David Sorkin".

David Sorkin